87-1208

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

DONNA OBERG, *et al.*,
Petitioners,

v.

AETNA CASUALTY & SURETY CO. and
A. H. ROBINS CO.,
Respondents.

ALEXIA ANDERSON, *et al.*,
Petitioners,

v.

AETNA CASUALTY & SURETY CO. and
A. H. ROBINS CO.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Whether the courts below erred in interpreting § 105(a) of the Bankruptcy Code, 11 U.S.C. § 105(a), to authorize an injunction staying petitioners from pursuing civil actions filed on behalf of thousands of women injured by the Dalkon Shield intrauterine device against a party which is not a debtor in bankruptcy. In a totally unprecedented decision, the Court of Appeals has interpreted § 105(a) to authorize a stay of petitioners' actions against the liability insurance carrier of the manufacturer of the intrauterine device—where the actions seek to recover damages only from the assets of the insurance carrier and only for the fraudulent and tortious acts of the carrier, where the actions will have no adverse financial impact on the debtor, and where no showing has been made that the pursuit of the civil actions will interfere with the debtor's ongoing efforts at reorganization in bankruptcy.

LIST OF PARTIES

The Court of Appeals consolidated three appeals for briefing and disposition. In Nos. 87-2517 and 87-2595 the plaintiff-appellants were petitioner Donna Oberg and twenty-six additional women (and ten spouses) who are Dalkon Shield victims, all residing in New Hampshire. The defendant-appellee was respondent Aetna Casualty & Surety Co. ("Aetna"). The debtor in bankruptcy, respondent A. H. Robins Company ("Robins"), which had intervened in the proceedings in the District Court, was also aligned as an appellee.

In No. 87-2518 the plaintiff-appellants were Alexia Anderson and approximately 1400 additional women (and their spouses and offspring) who are Dalkon Shield victims.* The defendant-appellee and intervenor in the proceedings below were respondents Aetna and Robins, respectively.

The parties who were individually named as plaintiffs in the District Court proceedings, all of whom are petitioners in this Court, are too numerous to list in the body of this Petition. They are listed instead in Appendix F, at pp. 31a-65a.

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* The Anderson suit originally was filed on August 21, 1986, in the United States District Court for the District of Kansas on behalf of Ms. Anderson and 4,006 additional named plaintiffs. That suit was dismissed without prejudice to plaintiffs' seeking relief from the bankruptcy stay that had been entered by the United States District Court for the Eastern District of Virginia. The Request for Relief from the stay was filed on October 7, 1986, on behalf of Ms. Anderson and the 1,380 additional parties listed as petitioners in Appendix F.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioners Donna Oberg, Alexia Anderson, and thousands of other similarly-situated Dalkon Shield victims respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled proceedings on September 9, 1987.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported at 828 F.2d 1023, and is reprinted

in Appendix A, at pp. 1a-8a. The Court of Appeals denied a timely Petition For Rehearing And Suggestion For Rehearing In Banc on October 23, 1987, in an Order reprinted in Appendix B, at pp. 9a-10a.

The underlying orders, memoranda and rulings from the bench entered by the United States District Court for the Eastern District of Virginia (Merhige, S.D.J.) have not been reported. They are reprinted in Appendices C, D and E, at pp. 11a-30a.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on September 9, 1987. The Court denied a timely Petition For Rehearing And Suggestion For Rehearing In Banc in an Order dated October 23, 1987. This Petition is filed within ninety days of the entry of that Order. *See* 28 U.S.C. § 2101(c). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

11 U.S.C. § 105. Power of court.

(a) The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

STATEMENT OF THE CASE

The Dalkon Shield is an intrauterine device that was manufactured and distributed by respondent Robins from 1971 through 1974. Manufacture of the device was discontinued in that year because of a rising tide of complaints and lawsuits alleging serious injuries by women

who had used the device. Robins did not recall the device, however, until mid-1984.

In August, 1985, Robins filed a voluntary petition for reorganization under Chapter 11 of the Bankrputcy Code in the United States District Court for the Eastern District of Virginia. That filing was precipitated by the massive problems arising out of the continuing flood of Dalkon Shield claims and lawsuits, and the financial burdens caused by the payment by Robins and its liability insurance carrier, respondent Aetna, of more than 500 million dollars in judgments and settlements to Dalkon Shield victims and their families over the preceding decade.

The filing of the Chapter 11 petition automatically stayed all pending actions that had been filed against the debtor Robins, pursuant to 11 U.S.C. § 362(a).[1] A re-

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[1] 11 U.S.C. § 362(a) provides as follows:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3), operates as a stay, applicable to all entities, of—
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien

curring question since Robins' bankruptcy filing has been whether Aetna may be shielded from the consequences of its own tortious and fraudulent actions by orders of the District Court overseeing the Robins bankruptcy proceedings, acting pursuant to its authority to stay litigation granted under the Bankruptcy Code.

The petitioners in this action have been denied permission by the District Court to file and pursue diversity actions naming Aetna alone as a defendant in the United States District Court for the District of Kansas and the United States District Court for the District of New Hampshire. Petitioners' complaints against Aetna allege that as Robins' product liability insurer Aetna (1) took over from Robins in 1975 the responsibility to monitor the performance of the Dalkon Shield and the decision as to whether or not to recall that dangerous product; (2) concealed the fact that Robins had engaged in the destruction of evidence in 1975; and (3) commissioned (and then concealed the negative results of) at least eight scientific studies on the safety and efficacy of the Dalkon Shield. Petitioners, whose injuries include sterility, infertility, surgical colostomy, septic abortions, spontaneous abortions, birth defects and infections, seek to prove Aetna's liability for those injuries and to recover damages from Aetna for its own tortious and fraudulent misconduct. The Court of Appeals has affirmed the District Court's denial of petitioners' rights to pursue their claims against Aetna.

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secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

The legal issues presented by this Petition have their genesis in the 1986 decision of the Court of Appeals entered in *A. H. Robins Co.* v. *Piccinin*, 788 F.2d 994 (4th Cir.), *cert. denied*, —— U.S. ——, 107 S. Ct. 251 (1986). In *Piccinin* the appellants, Dalkon Shield victims, challenged the authority of the District Court overseeing the Robins bankruptcy proceedings to enjoin litigation against co-defendants of Robins across the country. The Court of Appeals affirmed the District Court's broad injunction against litigation filed by Dalkon Shield victims against Robins' non-debtor co-defendants, including in some cases respondent Aetna, on four independent bases.[2]

First, relying on 11 U.S.C. § 362(a)(1), the Court determined that there was such an identity of interest between Robins and Aetna that Robins could be deemed the real party in interest in any claim against Aetna and that a judgment against Aetna would, in effect, be a judgment against the debtor in bankruptcy. *See* 788 F.2d at 999-1001. Second, relying on 11 U.S.C. § 362(a)(3), the Court determined that the Aetna insurance policy issued to Robins was property of the bankruptcy estate, and that any actions against Aetna which might be satisfied from the proceeds of that policy should be enjoined. *Id.* at 1001-02. Third, the Court relied on 11 U.S.C. § 105(a) to affirm the District Court's power to enjoin actions that might interfere with the debtor's reorganization. *Id.* at 1002-03. Finally, the Court relied on the "inherent power of courts under their general equity powers and in the efficient management of the[ir] dockets" as support for the injunction that had been entered by the District Court. *Id.* at 1003.

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[2] The "temporary" injunction that was the subject of the appeal in *Piccinin*, and that remains in effect today, was entered on October 11, 1985. It prohibits Dalkon Shield victims from pursuing claims against individual officers and employees of Robins for their alleged tortious and fraudulent actions, as well as claims against Aetna. *See* 788 F.2d at 1007.

After the decision in *Piccinin*, the petitioners here set out to file claims against Aetna alone in such a fashion that it would be clear that they were seeking recovery against Aetna only, and not Robins, for the wrongful acts committed or participated in by Aetna, and that damages were sought from the general assets of Aetna, and not from the proceeds of any policies of insurance issued by Aetna to Robins. Petitioners also agreed that they did not need, and would not seek, additional discovery from Robins in the pursuit of their claims. Thus, petitioners attempted to minimize any potential for interference with the ongoing reorganization efforts of the debtor Robins in the Chapter 11 proceedings.

In December, 1986 the District Court denied petitioners' motions to lift the stay or to modify its injunction. It refused to allow petitioners' lawsuits to be filed. *See* Appendices C & D, pp. 11a-18a. The District Court did not specifically address the question whether it had continuing authority to stay or enjoin petitioners' lawsuits. Rather, the Court observed that another action, *Breland* v. *Aetna Casualty & Surety Co.*, No. 86-0315-R, styled as a class action, was pending in the Eastern District of Virginia and raised similar claims against Aetna for negligence, strict liability, breach of warranty, fraud, conspiracy and racketeering. Relying solely on the pendency of *Breland*, the Court denied petitioners' requests for relief from the stay without prejudice, subject to their ability to refile if the Court did not certify *Breland* as a class action or if it entered an order permitting individual members of the *Breland* class to opt out and petitioners exercised that option. Appendix C at p. 14a; Appendix D at p. 18a.[3]

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[3] In January, 1987, the Oberg petitioners filed a renewed motion seeking leave to file and pursue their claims against Aetna in New Hampshire, noting that New Hampshire was a uniquely favorable forum for the resolution of these claims because of its six year statute of limitations. Petitioners also noted their opposi-

The Court of Appeals affirmed the District Court's orders on different grounds. That Court recognized that the appropriate question was not whether another suit was pending which raised similar claims against Aetna as those sought to be raised by petitioners, but whether instead the District Court had the power under the Bankruptcy Code to enjoin or stay petitioners' suits. Although asking the appropriate question, the Court of Appeals reached the wrong result.

The Court of Appeals used its earlier decision in *Piccinin* as the launching point for its analysis. It recognized, as respondents were forced to concede, that 11 U.S.C. § 362(a)(1) was inapplicable because petitioners' complaints expressly disavowed any effort to recover from the proceeds of the insurance policy issued by Aetna to Robins, or from any other assets of Robins. Appendix A, at p. 6a. The Court also assumed, without deciding, that because New Hampshire and Kansas comparative negligence law precludes contribution or indemnity among joint tortfeasors, a suit against Aetna based on its own tortious misconduct would not implicate any property of the Robins bankruptcy estate. Thus, the stay could not be supported by 11 U.S.C. § 362(a)(3) either. *Id.*

But, relying solely on the general authority set forth in 11 U.S.C. § 105(a), the Court of Appeals er-

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tion to having their claims resolved through the *Breland* proceeding. In April, the District Court denied this request for relief on the basis that although it had certified *Breland* as a class action, it had not yet decided whether members of the class would be free to "opt out" or whether it would instead be a so-called "mandatory" class action. Appendix F, at p. 30a. Petitioners' appeal from the denial of the second Oberg motion for relief from the stay was consolidated with petitioners' earlier appeals. The Court of Appeals affirmed the District Court's ruling that the renewed motion was premature. Appendix A, at p. 8a. To this date, the District Court still has not designated *Breland* as an "opt out" class action, and the petitioners still have not been afforded the opportunity to express their opposition to being represented in *Breland*.

roneously concluded that petitioners' lawsuits could be enjoined because their pendency would create irreparable harm to the bankruptcy estate. The Court reasoned, although no specific findings to this effect had been made by the District Court, that the proposed lawsuits against Aetna would place burdens on Robins' officers, directors and employees in responding to discovery requests. These "burdens" would "exhaust their energies and thus interfere with the debtor's reorganization." Appendix A, at pp. 6a-7a.

The Court of Appeals recognized that petitioners had expressly agreed *not* to depose any of Robins' officers, directors or employees in pursuing their claims against Aetna, or to otherwise subject Robins to any costs or burdens of litigation, and to proceed against Aetna based solely on the extensive discovery completed over many years in the nationwide Dalkon Shield litigation prior to the institution of the bankruptcy proceedings. But the Court dismissed the importance of petitioners' agreement, reasoning that petitioners could not "compel Aetna to follow the same hands-off policy." *Id.* at p. 7a.

Without stopping to examine whether its rationale was supported by controlling state law, the Court held that "[u]nder a system of comparative negligence, the trier of fact must determine Robins' relative fault in order to determine Aetna's relative fault," that Aetna logically would defend itself by arguing that Robins was fully responsible for petitioners' injuries, that "Robins will inexorably be drawn into this litigation," and that the burdens thereby placed on Robins' personnel would detract from the bankruptcy reorganization. *Id.* The Court of Appeals thus affirmed the District Court's authority to stay petitioners' actions on the novel ground that § 105 (a) of the Bankruptcy Code permits a bankruptcy court to enjoin litigation against a non-debtor third party to the bankruptcy proceedings, because of a likelihood that the non-debtor third party might attempt to involve the

debtor's employees in the contemplated litigation, and thereby detract from the debtor's reorganization efforts.

The Oberg petitioners filed a timely Petition For Rehearing And Suggestion For Rehearing In Banc. That Petition pointedly demonstrated that under applicable New Hampshire law, in a suit against Aetna, the trier of fact would not compare the relative fault of Aetna and Robins, or any other party, as the Court of Appeals erroneously had assumed. Rather, because joint tortfeasors are jointly and severally liable, and because there is no contribution among joint tortfeasors, in a suit by petitioners against Aetna governed by New Hampshire law petitioners would recover all their damages from Aetna, regardless of the fault of Robins or any other party, so long as Aetna was found to be more at fault than petitioners.[4] Thus, contrary to the Court of Appeals' unsupported assumptions about controlling state law, Robins' degree of fault relative to Aetna's would be wholly irrelevant in the lawsuits petitioners seek to pursue. The Court of Appeals denied this Petition For Rehearing without explanation. Appendix B.

REASONS FOR GRANTING THE WRIT

The Court of Appeals' decision creates an unprecedented power in the bankruptcy courts of this nation to enjoin litigation that does not involve the debtor in bankruptcy as a party, and that has no conceivable adverse financial impact on the debtor's estate. The Court's decision rests entirely on unproven speculation that in a suit filed against respondent Aetna for its tortious miscon-

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[4] *See, e.g., Simonsen* v. *Barlo Plastics Co.*, 551 F.2d 469 (1st Cir. 1977); *Kantor* v. *The Norwood Group, Inc.*, 127 N.H. 831, 508 A.2d 1078 (1986); *Lavoie* v. *Hollinracke*, 127 N.H. 764, 513 A.2d 316 (1986); *Hurley* v. *Public Service Co.*, 123 N.H. 750, 465 A.2d 1217 (1983); *Consolidated Utility Equipment Services, Inc.* v. *Emhart Manufacturing Corp.*, 123 N.H. 258, 459 A.2d 287 (1983); *Mihoy* v. *Proulx*, 113 N.H. 698, 313 A.2d 723 (1973).

duct, Aetna might seek to conduct discovery of Robins, its officers and employees in an effort to develop its own defense, and that such discovery obligations would unduly interfere with and irreparably harm the ongoing efforts by Robins to reorganize under Chapter 11 of the Bankruptcy Code. Yet nowhere in the record is there so much as a mention of what discovery measures Aetna might pursue in the petitioners' lawsuits, which Robins' employees Aetna might seek to depose, whether those individuals remain employees of Robins today, whether any of those employees are actively involved in the Chapter 11 proceedings, and to what extent, if any, Aetna's assumed future efforts to conduct discovery would in fact interfere with the Chapter 11 reorganization of Robins.

The Court of Appeals' decision is bizarre. It expands the bankruptcy courts' powers under 11 U.S.C. § 105(a) beyond Congress' wildest expectations when it enacted the Bankruptcy Code. It is unsupported by any other federal decision construing § 105(a). It is in conflict with numerous other decisions of the Courts of Appeals, the District Courts and the Bankruptcy Courts interpreting when and how the benefits of a stay of litigation resulting from the debtor's filing of a petition in bankruptcy may be extended to non-debtors. It interprets the standards for issuing a stay under § 105(a) in a manner that is in conflict with applicable decisions of this Court, as well as numerous other federal courts.

Finally, the Court of Appeals has issued this novel and important decision broadly interpreting the injunctive powers of bankruptcy courts under § 105(a) in a case that affects the rights of thousands of Dalkon Shield victims to pursue presumptively valid claims for relief, and leaves them in a judicial limbo, waiting for the District Court to tell them when, if ever, they may return to that Court seeking permission to pursue their claims. *See* footnote 3 *supra*. In sum, there are ample grounds for this Court to exercise its discretion and grant plenary

review to the important question presented by this Petition. *See* Supreme Court Rule 17.1.

A. The *Piccinin* Decision Was Itself In Conflict With Numerous Decisions Of The Courts Of Appeals.

To comprehend fully the unprecedented scope of the Court of Appeals' decision in this case it is necessary to place it in context. Prior to the Court of Appeals' decision in *Piccinin*, discussed on page 5 *supra*, it had been the unanimous view of the Courts of Appeals, including the Court of Appeals for the Fourth Circuit, that the automatic stay provisions of § 362(a) of the Bankruptcy Code had *no application* to litigation filed against parties other than the debtor in bankruptcy. *See, e.g., Fortier* v. *Dona Anna Plaza Partners*, 747 F.2d 1324, 1329-30 (10th Cir. 1984); *Williford* v. *Armstrong World Industries, Inc.*, 715 F.2d 124, 126-27 (4th Cir. 1983); *Lynch* v. *Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196-98 (6th Cir. 1983); *Wedgeworth* v. *Fibreboard Corp.*, 706 F.2d 541, 544-46 (5th Cir. 1983); *Austin* v. *Unarco Industries, Inc.*, 705 F.2d 1, 4-5 (1st Cir.), *cert. dismissed*, 463 U.S. 1247 (1983); *Pitts* v. *Unarco Industries, Inc.*, 698 F.2d 313, 314 (7th Cir.), *cert. denied*, 464 U.S. 1003 (1983).

The Court of Appeals' decision in *Piccinin* substantially departed from past precedent in relying extensively on § 362(a) of the Bankruptcy Code to affirm the District Court's October 11, 1985 injunction against virtually all litigation raising claims by Dalkon Shield victims. The *Piccinin* decision subsequently has been described by the Court of Appeals for the Second Circuit as a limited exception to the general rule that was adopted in "unusual circumstances." *Teachers Insurance & Annuity Ass'n* v. *Butler*, 803 F.2d 61, 65 (2d Cir. 1986). The Court of Appeals for the Fifth Circuit recently has interpreted *Piccinin*'s extension of the benefit of the automatic stay provisions of § 362(a) to parties who have not filed for bankruptcy as being limited to

"circumstances where the debtor and the nonbankrupt party can be considered one entity or as having a unitary interest . . . ." *Matter of S. I. Acquisition, Inc.*, 817 F.2d 1142, 1148 (5th Cir. 1987).[5] Any such limits on the scope of *Piccinin* were cast aside by the Court of Appeals in this case.

B. The Decision Below Gives Unprecedented Scope To The Authority Of Bankruptcy Courts Under 11 U.S.C. § 105(a), Is In Conflict With Other Decisions, And Is Inconsistent With The Intent Of Congress.

The decision below, unlike *Piccinin*, was bottomed solely on the authority of 11 U.S.C. § 105(a) since the Court of Appeals conceded there was no way to stretch the fabric of the automatic stay provisions in § 362(a) to cover the District Court's orders enjoining petitioners from litigating their claims against Aetna. Although there is some support in reported decisions of bankruptcy courts and district courts for the proposition that § 105 (a) authorizes a bankruputcy court, under certain limited circumstances, to enjoin proceedings against nondebtors, there is also authority to the contrary. Before the decision in this case, however, there was no reported decision that entered or affirmed such an injunction where the property of the debtor's estate was not imminently threatened by the litigation. This Court should grant plenary review to resolve the conflict that rages in the bankruptcy courts over the proper scope of § 105 (a). This case presents an ideal vehicle for the resolution of that conflict inasmuch as the Court of Appeals

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[5] *See also* 2 *Collier on Bankruptcy* § 362.02, at n.23 (15th ed. 1987) (in which the Court in *Piccinin* is described as "very broadly" interpreting the powers of a bankruptcy court under § 105(a) to enjoin litigation against officers of the debtor and other co-defendants). Prior to the decision below, even bankruptcy courts within the Fourth Circuit had predicted that *Piccinin* would be limited closely to its facts. *See In Re McLean Trucking Co.*, 74 B.R. 820, 825-26 (Bankr. W.D.N.C. 1987).

here interpreted § 105(a) more expansively than any other court ever so much as hinted in the past.[6]

There is no reported decision of any court applying § 105(a) to enjoin litigation where the only threat to the debtor posed by that litigation is that its officers or employees may be required by third parties to produce relevant documents or give testimony. The decision below also is unprecedented in its failure to recognize that even those courts that have broadly interpreted the scope of § 105(a) have emphasized the limited nature of the circumstances in which it may be used to enjoin third-party litigation, the temporary duration of any stays that may be entered, and the need for the debtor to prove conclusively that the stay is necessary to prevent irreparable injury that otherwise will be caused to the debtor. The Court of Appeals' decision affirmed the District Court's continued maintenance of a § 105(a) injunction without the debtor having offered any evidence to meet these stringent requirements.

The Court of Appeals' decision also cannot be reconciled with the intent of Congress, as reflected in the legislative history of the Bankruptcy Code.

1. *The Legislative History Of § 105(a).*

The Reports of the House of Representatives and Senate Judiciary Committees on the bills that became the Bankruptcy Code state in general terms that § 105(a) was designed to give bankruptcy courts broad authority to issue orders, analogous to the authority conferred upon Article III Courts by the All Writs Act, 28 U.S.C. § 1651. *See* H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 316-17 (1977), *reprinted in* 1978 U.S. Code Cong. & Ad. News

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[6] The powers granted to bankruptcy courts under § 105(a) caused this Court concern in its decision invalidating the grant of jurisdiction to bankruptcy judges under the Code. *See Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 56, 85 (1982) (plurality opinion).

5963, 6273-74. *See also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 29 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5815. Although the legislative history of § 105(a) is sparse, both Committees emphasized that the power to stay litigation in situations not contemplated by the automatic stay provisions of § 362(a) is limited, and is to be exercised with care. The Reports of both Committees state expressly:

> Stays or injunctions issued under [§ 105] will not be automatic upon the commencement of the case, but will be granted or issued under the usual rules for the issuance of injunctions . . . . Thus, the court will have to determine on a case-by-case basis whether a particular action which may be harming the estate should be stayed.

H.R. Rep. No. 95-595, *supra* at 342, *reprinted in* 1978 U.S. Code Cong. & Ad. News at 6298; S. Rep. No. 95-589, *supra* at 51, *reprinted in* 1978 U.S. Code Cong. & Ad. News at 5837.

Those courts that have construed § 105(a) to confer authority on the bankruptcy courts to enjoin litigation against nondebtors have emphasized that such a stay may be issued only after the debtor has met an extremely stringent burden of proof. One test that often has been repeated was formulated by the District Court in *In Re Otero Mills, Inc.*, 25 B.R. 1018 (D.N.M. 1982). That Court held:

> In order for the Court to enjoin a creditor's action against a codebtor or guarantor, the debtor must show: (1) irreparable harm to the bankruptcy estate if the injunction does not issue; (2) strong likelihood of success on the merits [*i.e.*, the probability of a successful plan for reorganization]; (3) no harm or minimal harm to the other party or parties [; and (4) that the injunction will serve the public interest].

25 B.R. at 1021.

The decisions following *Otero Mills*, mindful of Congress' expressed intent, typically stress the heavy burden of proof to be placed on the debtor before an injunction may be entered staying litigation against non-debtors, the temporary duration of any such third-party stay, and the requirement that other parties not be injured by the stay.[7]

The Court of Appeals in this case departed from Congress' intent in affirming the continuing effect of an injunction entered under § 105(a) where the District Court did not require the debtor to prove its entitlement to such injunctive relief under any standard.

2. *There Is A Substantial Conflict In Reported Decisions Over the Validity Of* Otero Mills.

The sole authority cited by the Court of Appeals in this case for its broad interpretation of § 105(a) was the *Otero Mills* decision. But the analysis of § 105(a) adopted in *Otero Mills* has been rejected by many other

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[7] *See, e.g., In Re TRS, Inc.*, 76 B.R. 805, 807-08 (Bankr. D. Kan. 1987) (the cases in which § 105(a) may be applied to stay actions against non-debtors are "limited" and "extraordinary"; while the burden of proof on the moving party is a heavy one and must be supported by substantial evidence); *Matter of Supermercado Gamboa, Inc.*, 68 B.R. 230, 234 (Bankr. D.P.R. 1986) (a generalized assertion of non-specific detrimental impact to the bankruptcy reorganization is not sufficient); *In Re Monroe Well Service, Inc.*, 67 B.R. 746, 752-53 (Bankr. E.D. Pa. 1986) (there must be a showing of "danger of imminent, irreparable harm to the estate or the debtor's ability to reorganize"; the court must balance the harm to the party who is sought to be enjoined and other societal interests); *In Re N-Ren Corp.*, 64 B.R. 773, 776-78 (Bankr. S.D. Ohio 1986); *Matter of Provincetown Boston Airline, Inc.*, 52 B.R. 620, 624-25 (Bankr. M.D. Fla. 1985); *Matter of A & B Heating & Air Conditioning, Inc.*, 48 B.R. 401, 403 (Bankr. M.D. Fla. 1985) ("before injunctive relief can be granted, the party seeking the protection must make a very clear case that the relief, if granted, would not damage the other party"); *In Re Lion Capital Group*, 44 B.R. 690, 701 (Bankr. S.D.N.Y. 1984).

courts. For example, the Court in *In Re Venture Properties, Inc.*, 37 B.R. 175, 177 (Bankr. D.N.H. 1984), flatly held that *Otero Mills* "was simply wrongly decided." The *Venture Properties* Court reasoned persuasively that there was no evidence that Congress intended for parties such as respondent Aetna to benefit from a stay of litigation unless they themselves " 'come into' the bankruptcy court with their liabilities *and* all their assets." *Id.* (emphasis in original).

The District Court in *In Re A.J. Mackay Co.*, 50 B.R. 756, 762 (D. Utah 1985), agreed that "*Otero Mills* and its progeny were wrongly decided." That Court held that a bankruptcy court's jurisdiction in a Chapter 11 case cannot be expanded beyond the debtor and its property.

In *In Re Juneau's Builders Center, Inc.*, 57 B.R. 254, 258 (Bankr. M.D. La. 1986), the Court held that stays entered under the authority of § 105(a) must be limited to circumstances in which the litigants to be enjoined are attempting to pressure the debtor through the third party, thereby accomplishing indirectly what the automatic stay prevents them from doing directly. The Court also criticized the *Otero Mills* decision for not requiring that the "privilege of a stay against creditor action should carry with it the burden of debtor regulation." *Id.* at 259.

The District Court in *In Re Continental Airlines, Inc.*, 61 B.R. 758, 781 n.47 (S.D. Tex. 1986), criticized the line of decisions, beginning with *Otero Mills*, that illustrated an "unbridled reliance upon the Code's extraordinary writ provision." That Court observed that "[s]ection 105 is to be relied upon in aid of the bankruptcy court's jurisdiction, but it does not provide a 'candy store' which allows the Court to pick and choose among properly promulgated rules which it likes or dislikes." *Id.* (quoting *In Re Arnage, Inc.*, 33 B.R. 662, 665 (Bankr. E.D. Mich 1983)).

The Court in *In Re Swann Gasoline Co.*, 62 B.R. 13, 13-14 (Bankr. E.D. Pa. 1986), held that application of

Otero Mills must be limited to situations in which the third-party litigation sought to be enjoined not only would seriously impair the debtor's operations and efforts to reorganize, but also would adversely or detrimentally pressure the debtor.

In *Matter of Supermercado Gamboa, Inc.*, 68 B.R. 230, 234 (Bankr. D.P.R. 1986), the Court opined that the "relaxed approach [to third-party stays under § 105] initiated in *In Re Otero Mills, Inc.* . . . and its progeny is simply bad law."

The foregoing discussion demonstrates that there is a substantial, continuing conflict reflected in federal judicial decisions across the country concerning the scope of the powers granted to the bankruptcy courts under § 105 (a). This Petition squarely presents the important question when, if ever, a party such as Aetna which has not submitted its assets to the jurisdiction of the bankruptcy courts may nonetheless be afforded protection against litigation by those courts. This Court should accept plenary review of this case if only to resolve the conflict about the scope of the bankruptcy courts' power to stay third-party litigation under § 105(a) of the new Bankruptcy Code, and to provide needed guidance to the bankruptcy courts.

3. *The Decision Below is Unprecedented.*

Even disregarding the conflict described above, the Court should grant this Petition for Writ of Certiorari. The decision below is totally unprecedented in authorizing the continuance of a "temporary" stay of litigation filed against a party not in bankruptcy, for a period of over two years, when the only alleged threat to the debtor is the speculative prospect that some of the debtor's officers or employees may be distracted from the reorganization process by the need to respond to discovery requests in the stayed litigation. In every decision following *Otero Mills*, and in *Otero Mills* itself, the third-party litigation that was stayed had been filed against officers or

employees of the debtor, or against parties who were also liable on debts owed by the debtor. These decisions all have stressed the resulting adverse financial impact on the debtor's estate that would be caused if the third-party litigation were permitted to proceed. The Court of Appeals in this case has, for the first time, authorized a stay under § 105(a) despite its own conclusion that the litigation enjoined would have no conceivable financial impact on the debtor's estate. *See* Appendix A, at p. 6a. The decision below thus stands alone among *Otero Mills*' progeny.

In *In Re Futura Industries, Inc.*, 69 B.R. 831, 835 (Bankr. E.D. Pa. 1987), the Court expressly limited *Piccinin* and *Otero Mills* to situations in which corporate officers, who would be indemnified by the debtor, were the targets of the third-party litigation. In a lengthy analysis of the *Otero Mills* line of cases, that same court earlier observed that all the reported decisions authorizing stays protecting non-debtors from litigation under § 105(a) could be broken down into three categories: (1) where the non-debtor defendant owns assets which will be a source of funds or credit for the debtor's proposed reorganization; (2) where the non-debtor defendant is a principal of the debtor whose energy and commitment to the Chapter 11 proceedings are essential to the formulation of a reorganization plan; and (3) where a judgment against the non-debtor defendant could be imputed to the debtor and thereby diminish the estate either through application of collateral estoppel or the effect of an indemnity agreement. *In Re Monroe Well Service, Inc.*, 67 B.R. 746, 751 (Bankr. E.D. Pa. 1986) (collecting cases).[8]

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[8] Similarly, the Court in *Matter of Provincetown Boston Airlines, Inc.*, 52 B.R. 620, 625-26 (Bankr. M.D. Fla. 1986), formulated two categories of cases in which § 105(a) had been held to authorize temporary stays of third-party litigation: where the non-debtor defendant is a key officer of the debtor and should be protected during the initial stages of a reorganization proceeding; and where the non-debtor defendant owns assets that were to be used to fund the plan of reorganization or to obtain credit for the debtor.

Even among courts accepting the validity of *Otero Mills*, there is no unanimity of opinion concerning the circumstances under which § 105(a) authorizes a third-party stay. For example, the Court in *Mahaffey* v. *E-C-P of Arizona, Inc.*, 40 B.R. 469, 474 (Bankr. D. Colo. 1984), rejected as "a dangerous precedent," the notion that creditors should be enjoined from suing key employees of the debtor or guarantors of the debtor's obligations, even if their efforts were essential to effectuating the debtor's reorganization, "absent evidence that such guarantor will contribute personal assets to the reorganization."

In sharp contrast to all the earlier precedents, the Court of Appeals in this case has affirmed the continued maintenance of a stay under § 105(a) that applies to litigation against a party which is neither a principal, officer, nor guarantor of the debtor, on the basis that the debtor or its employees conceivably could be called upon in the stayed litigation to provide discovery or to testify. The stay remains in place even though respondents Robins and Aetna never have told any court which of the debtor's employees Aetna may seek to depose or call to the stand in petitioners' lawsuits, whether those individuals remain employed by the debtor, and, if so, whether those employees have a significant role to play in the reorganization proceedings. And rather than protecting Robins by limiting or staying Aetna's requests for discovery, the District Court has protected Aetna by staying petitioners' lawsuits.[9] The Court of Appeals affirmed this

[9] This case is a far cry from the District Court and Bankruptcy Court decisions in *In Re Johns-Manville Corp.*, 40 B.R. 219 (S.D.N.Y. 1984), *aff'g*, 26 B.R. 420 (Bankr. S.D.N.Y. 1983). In that case the District Court affirmed a stay against discovery sought from the debtor and its employees by a former co-defendant of the debtor in pending product liability litigation. The Court held that the extensive discovery sought by the co-defendant would seriously interfere with the ongoing Chapter 11 proceedings. The Court properly stayed the discovery requests served on the debtor for a reasonable

stay despite the fact that it was assured that the petitioners' actions against Aetna would have no conceivable adverse financial impact on the estate of the debtor Robins. There simply is no limiting principle contained in the decision below which cabins the authority of bankruptcy judges to enjoin litigation under § 105(a).

C. The Decision Below Is In Conflict With A Controlling Decision Of This Court And Implicates Petitioners' Rights To Due Process.

The most fundamental limiting principles ignored by the Court of Appeals in espousing its expansive vision of bankruptcy court jurisdiction and power are the equitable principles set down by this Court in *Landis* v. *North American Co.*, 299 U.S. 248, 254-59 (1936). Justice Cardozo's opinion for the Court in *Landis* has been cited repeatedly by those courts interpreting the equitable power of bankruptcy judges to stay litigation in situations not contemplated by the express terms of § 362(a), whether under § 105(a) or under the "general discretionary power of courts to stay proceedings in the interest of justice and in control of their dockets." *See, e.g., Wedgeworth* v. *Fibreboard Corp.*, 706 F.2d 541, 544-45 (5th Cir. 1983); *In Re Continental Airlines, Inc.*, 61 B.R. 758, 781 (S.D. Tex. 1986); *In Re Arrow Huss, Inc.*, 51 B.R. 853, 859 (Bankr. D. Utah 1985); *Matter of A & B Heating & Air Conditioning, Inc.*, 48 B.R. 401, 403 (Bankr. M.D. Fla. 1985); *In Re Lion Capital Group*, 44 B.R. 690, 703 (S.D.N.Y. 1984).

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time to allow the debtor "a breathing period" in which to reorganize. The Court did not even intimate that the pendency of the discovery requests might warrant a stay enjoining in its entirety the underlying litigation against the debtor's co-defendants. If the discovery sought by Aetna from Robins in petitioners' lawsuits proves to be onerous, Robins can seek appropriate relief from the Bankruptcy Court. The potential that such discovery may be sought is no justification for enjoining petitioners' lawsuits against Aetna; nor did the courts below have the authority under the Bankruptcy Code to approve such a draconian injunction.

In *Landis* this Court made clear that a party seeking a stay of litigation bears the burden of justifying any delay that will result in that proceeding:

> [T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.

299 U.S. at 255. The Court also observed that a stay "is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description." *Id.* at 257.

The decision below is in conflict with *Landis* and the recent federal decisions that have paid heed to its principles. The petitioners here, numbering in the thousands, are Dalkon Shield victims seeking the opportunity to pursue legitimate claims for relief against alleged actions by Aetna that, if proven, are despicable. In spite of years of litigation, the victims remain uncompensated for serious physical injuries, infertility, spontaneous abortions and birth defects. The "temporary" injunction entered by the District Court over two years ago remains in place, with no termination date in sight. The promised opportunity to "opt out" of a proposed class action in which petitioners do not care to be represented has never come. *See* footnote 3 *supra*. Although the Court of Appeals paid "lip service" to this Court's recent holding "that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from [a] class [action] by executing and returning an 'opt out' or 'request for exclusion' form to the court," *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 812 (1985), petitioners remain trapped in a judicial limbo

created by the District Court's failure to decide whether or not the *Breland* case should be an "opt out" class action. *See* Appendix A, at p. 8a.

The courts below have ignored the harm caused to petitioners by the continued pendency of the October 11, 1985 injunction, and have elevated over petitioners' rights to seek redress in the courts for their injuries a chimerical assertion that petitioners' pursuit of their claims against Aetna will cause irreparable injury to Robins' efforts at reorganization in bankruptcy. In so ruling, these courts have created from whole cloth a new power for federal bankruptcy courts that Congress never contemplated and that no other court ever has espoused. Thus, plenary review by this Court also is fully warranted to correct the lower courts' radical departures from the equitable principles stated in *Landis* and from the accepted and usual course of judicial proceedings.

CONCLUSION

For the reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 87-2517

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

DONNA OBERG, *et al.*,
Plaintiff-Appellant,

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant-Appellee

A. H. ROBINS COMPANY, INCORPORATED,
Debtor-Intervenor

No. 87-2518

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor

ALEXIA ANDERSON, *et al.*,
Plaintiff-Appellant

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant-Appellee

A.H. ROBINS COMPANY, INCORPORATED,
Debtor-Intervenor

No. 87-2595

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor

DONNA OBERG, *et al.*,
Plaintiff-Appellant

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant-Appellee

Appeals from the United States District Court
for the Eastern District of Virginia, at Richmond
Robert R. Merhige, Jr., Senior District Court Judge
(CA-85-1307)

Argued: July 9, 1987 Decided: Sept. 9, 1987

Before: RUSSELL, WIDENER, and CHAPMAN, *Circuit Judges.*

Joseph F. McDowell, III (Cullity, Kelley & McDowell; John T. Baker; Bragg & Dubofsky, P.C.; Michael J. Farrell; Barry M. Taylor; Jenkins, Fenstermaker, Kreiger, Kayes & Farrell on brief) for Appellants; James S. Crockett, Jr. (William R. Cogar, Clifford W. Perrin, Jr.; Linda J. Thomason; Mays & Valentine on brief); W. Scott Street, III (A. Peter Brodell; Williams, Mullen, Christian & Dobbins; John G. Harkins, Jr.; Deborah F. Cohen; Pepper, Hamilton & Scheetz; Robert L. Elkins; M. Blane Michael; Robert G. McLusky; Jackson, Kelly, Holt & O'Farrell on brief) for Appellees.

RUSSELL, Circuit Judge:

Does our holding in *A.H. Robins Company v. Piccinin*, 788 F.2d 944 (4th Cir.), *cert. denied*, 107 S. Ct. 251 (1986), apply when the plaintiff-claimants seeking to sue the third-party defendant disavow any interest in the debtor's assets, and when the plaintiffs agree to so limit their discovery that they do not interfere with the debtor's rehabilitative process? We hold that under such circumstances the court has authority to stay the suit against the third-party defendant because that third party would inevitably be required to put a burden on the debtor in order to defend against the plaintiffs. We therefore affirm the district court's denial of the motions to lift the stay.

I.

The facts leading up to this litigation have been set forth in detail in *Piccinin*, so we need only review them briefly here. In *Piccinin* a group of plaintiffs, who claimed they were injured by the Dalkon Shield intrauterine device, sought to sue Aetna Casualty & Surety Company for its actions in connection with the Dalkon Shield. The Dalkon Shield was manufactured by A.H. Robins Company which has filed for reorganization in bankruptcy. Aetna, as Robins' product liability insurer, allegedly (1) took over from A.H. Robins the monitoring of the device while in utero, (2) took over from Robins the decision whether or not to recall the device, (3) concealed the fact that Robins had destroyed evidence, and (4) commissioned and then concealed the results of at least eight studies that showed defects in the device.

We held, in *Piccinin*, that the district court had four independent grounds on which it could stay the plaintiffs' suit against Aetna. Two of these grounds related to the fact that the plaintiffs in that suit sought damages out of the proceeds from the product liability insurance policy that Robins had purchased from Aetna. We found

that a stay was authorized under 11 U.S.C. § 362(a)(1)[1] because there was such identity between the debtor (Robins) and the third-party defendant (Aetna) that a judgment against Aetna would in effect be a judgment against Robins. We also found that a stay was authorized under 11 U.S.C. § 362(a)(3)[2] because Aetna might seek indemnification from Robins for any damages it had to pay, thus implicating the debtor's property.

We also found two equitable bases for the court's authority to stay the third-party suit. Both 11 U.S.C. § 105[3] and 28 U.S.C. § 1334[4] give the court general equity power to stay litigation that could interfere with the reorganization of the debtor. In addition to jeopardizing the debtor's property, we said, the litigation would adversely affect the reorganization because it would subject Robins' officers, directors, and employees to extensive discovery.

The appellants in the present cases have carefully drafted their complaints in an attempt to distinguish them from *Piccinin*. Appellant Oberg, who represents a group of 39 plaintiffs, and appellant Anderson, who represents a group of 4,007 plaintiffs, tried to sue Aetna for its actions in connection with the Dalkon Shield. Both

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[1] Section 362(a)(1) imposes an automatic stay of any proceeding "commenced or [that] could have been commenced against the debtor" at the time of the filing of the Chapter 11 proceeding.

[2] Section 362(a)(3) directs stays of any action, whether against the debtor or third parties, to obtain possession or exercise control over property of the debtor.

[3] Section 105 empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *In re Otero Mills, Inc.*, 25 B.R. 1018 (D.N.M. 1982).

[4] Section 1334 grants the "inherent power of courts under their general equity powers and in the efficient management of the dockets to grant relief" by staying a third-party suit. *Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983).

appellants sought recovery solely from Aetna's own assets and solely for Aetna's own actions. They also both agreed not to depose any of Robins' officers, directors, or employees without prior permission of the court. They anticipate that taped depositions currently available to them will be adequate to support their cause.

Anderson originally filed her suit against Aetna in federal district court in Kansas. That court dismissed her suit without prejudice in deference to the automatic stay provisions of 11 U.S.C. § 362(a). On October 7, 1986, Anderson sought permission from the Virginia district court hearing the bankruptcy petition to refile her suit in Kansas. On the same day, Oberg sought permission from the Virginia court to file an identical action in New Hampshire. The court refused to lift the stay in either case. It did not discuss any of the bases for the stay that we articulated in *Piccinin*. Instead, it noted that there was already a suit against Aetna for negligence, strict liability, breach of express warranty, fraud, civil RICO, and civil conspiracy. This suit, *Breland v. Aetna Casualty & Surety Co.*, 86-0315-R (E.D. Va.) requested certification of two classes, one composed of all Dalkon Shield claimants who have product liability suits now in court or who commence such suit within 36 months, and the other composed of all other persons with potential Dalkon Shield product liability claims.

The court ruled that both Anderson's and Oberg's suits were duplicative of *Breland*, and it therefore denied the relief requested. It dismissed the cases without prejudice, subject to refiling if the *Breland* matter did not fairly and adequately dispose of their concerns. The court has since conditionally certified the classes in *Breland*.

On January 13, 1987, Oberg filed with the court a second request to lift the stay on the ground that *Breland* does not adequately address her concerns. The court again denied the request, principally on the ground that it was premature.

II.

Aetna concedes that section 362(a)(1) is inapplicable in the present case because the complaints expressly exclude any recovery from Robins' insurance proceeds. Therefore, it cannot be said that there is such identity between the debtor and the third-party defendant that a judgment against Aetna would in effect be a judgment against Robins.

The appellants contend that section 362(a)(3) also is inapplicable because both New Hampshire and Kansas have adopted the doctrine of comparative negligence and generally do not permit contribution or indemnity among joint tortfeasors. *See, e.g., Hurley v. Public Service Company*, 123 N.H. 750, 465 A.2d 1217 (1983); *Consolidated Utility Equipment Services, Inc. v. Emhart Manufacturing Corporation*, 123 N.H. 258, 459 A.2d 287 (1983); *Mills v. Smith*, 9 Kan. App. 2d 80, 673 P.2d 117 (1983); *Brown v. Keill*, 224 Kan. 195, 580 P.2d 867 (1978). Although Aetna contends that these cases do not fully resolve the issues of contribution and indemnity, we will assume, without deciding, that under both New Hampshire law and Kansas law, a suit against Aetna based solely on its own negligence would implicate no property of the debtor A.H. Robins and thus would not be precluded by section 362(a)(3).

Our examination of the equitable bases for a stay produces a contrary conclusion. Under section 105, the court has authority to issue any order "that is necessary or appropriate to carry out the provisions of this title." *In re Otero Mills, Inc., supra.* To enjoin a creditor's action against a codebtor under section 105, the debtor must show, *inter alia*, irreparable harm to the bankruptcy estate if the injunction does not issue. Because we have already determined that these actions pose no direct threat to Robins' property, we confine our analysis to other kinds of harm. In the context of this case, that harm would be the burden placed on Robins' officers, directors, and employees, which would exhaust their en-

ergies and thus interfere with the debtor's reorganization.

The appellants contend that there would be no burden on Robins because the plaintiffs have agreed not to depose any of Robins' officers, directors, or employees, or otherwise subject them to the costs of litigation. Although we applaud the plaintiffs' efforts to simplify and streamline the litigation, these efforts are not enough. Oberg and Anderson can agree not to impose any of the burdens of litigation upon Robins, but they cannot compel Aetna to follow the same hands-off policy.

Inevitably, Aetna must involve Robins in this litigation. Aetna's primary defense logically will be that Robins—not Aetna—is responsible for the injuries suffered by these plaintiffs, and that any detrimental actions taken by Aetna were on behalf of or at the direction of Robins. Under a system of comparative negligence, the trier of fact must determine Robins' relative fault in order to determine Aetna's relative fault. Despite the plaintiffs' good intentions, Robins will inexorably be drawn into this litigation. Because this involvement will put a substantial burden on Robins, it will detract from the reorganization process. We therefore hold that under section 105, the court had authority to stay these actions.

The appellants contend that there is a countervailing equity based on statutes of limitations. New Hampshire already has the longest statute of limitations in the country for this kind of action (6 years), and actions there could be barred by the delay of these suits. The appellants suggest that Aetna has refused to accept the notion that a bankruptcy stay tolls the state statutes of limitations. We have no authority, of course, to make determinations regarding New Hampshire or Kansas law. It is our view, however, that by seeking the protection of the court under the bankruptcy laws, Aetna implicitly waives its right to claim that this stay does not toll the

state statutes of limitations. Our system of law universally frowns on a party who would use the stay as both a sword and a shield.[5]

III.

In her second suit, Oberg requested that the court lift the stay on the ground that *Breland*, the class action against Aetna, did not adequately address her concerns. We agree with the court that this is premature.

"[D]ue process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion' form to the court." *Phillips Petroleum Company v. Shutts*, 472 U.S. 797, 812 (1985). Oberg has not yet been offered the opportunity to opt out of *Breland*, and we are unwilling to assume that when the opportunity arises, she will choose not to participate in the class action. Her decision at that date could be influenced by numerous factors, including the knowledge that if she chooses to opt out, she must still seek the permission of the court in bankruptcy in order to bring a separate suit in New Hampshire. We offer no opinion as to whether *Shutts* requires the court at that time to make available an alternative timely remedy to plaintiffs who "opt out" of the class.

The court below dismissed these suits without prejudice, subject to refiling if the *Breland* matter does not fairly and adequately dispose of their concerns. At this juncture, we believe that that decision best protects the interests of all parties. Therefore, we

AFFIRM.

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[5] The appellants also contend that Aetna is equitably estopped from arguing in favor of the stays in these suits because this is inconsistent with Aetna's actions in *Breland, supra.* The short answer to this is that there can be no equitable estoppel without detrimental reliance. *See, e.g., Heckler v. Community Health Services*, 467 U.S. 51, 59 (1984). There is no evidence that the appellants relied on Aetna's conduct in such a manner as to change their position for the worse.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 87-2517

No. 87-2595

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

DONNA OBERG, *et al*,
Appellants,

versus

AETNA CASUALTY & SURETY COMPANY,
Appellee,

A. H. ROBINS COMPANY, INCORPORATED,
Debtor-Intervenor.

On Petition for Rehearing with Suggestion for Rehearing In Banc.

ORDER

The appellants' petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Russell, with the concurrence of Judge Widener and Judge Chapman.

For the Court,

/s/ JOHN M. GREACEN
Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Chapter 11
No. 85-01307-R
Retained Proceeding
(Judge Merhige)

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

EMPLOYER'S TAX IDENTIFICATION NO. 54-0486348

Adversary Proceeding
No. 86-1050-R

ALEXIA ANDERSON, *et al.*,
Plaintiffs,

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant.

ORDER

For the reasons stated in the accompanying memorandum, the Court hereby ADJUDGES and ORDERS that plaintiffs' motion for relief from stay is hereby DENIED. This case stands dismissed without prejudice for the plaintiffs to refile under the circumstances outlined in the Court's memorandum.

Let the Clerk send a copy of this order and accompanying memorandum to all counsel of record.

/s/ Robert R. Merhige, Jr.
United States District Judge

Date Dec. 1, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Chapter 11
No. 85-01307-R
Retained Proceeding
(Judge Merhige)

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

EMPLOYER'S TAX IDENTIFICATION NO. 54-0486348

Adversary Proceeding
No. 86-1050-R

ALEXIA ANDERSON, *et al.*,
Plaintiffs,

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant.

MEMORANDUM

This matter comes before the Court on plaintiffs' motion for relief from stay filed October 7, 1986. A. H. Robins Company, Incorporated ("Robins," "Debtor") filed its response on October 31, 1986. Aetna Casualty & Surety Company ("Aetna) then filed its response to plaintiffs' motion on November 6, 1986. The matter is now ripe for disposition.

Plaintiffs filed this motion in an effort to seek relief from the automatic stay so that they could proceed in a

civil action against Aetna, a co-defendant of Robins in this bankruptcy. The instant plaintiffs allege generally that Aetna, as the underwriter and liability insurer of the Dalkon Shield, was negligent, fraudulent, and a co-conspirator with Robins, and should thus be liable for additional money damages to the women who were allegedly injured by the Dalkon Shield.

Robins argues that this action should not be permitted to proceed in light of the United States Court of Appeals for the Fourth Circuit's ruling in *A. H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1985) where the court found that the automatic stay included Robins' co-defendants. Moreover, Robins argues that the *Breland* action, if allowed to proceed, would be dispositive of any issues in this matter. Aetna, although filing a separate brief, presents the same arguments as does Robins.

Plaintiffs argue in response to this opposition that *Breland* is not, and should not, be declared dispositive of their issues. They contend that since they did not join the plaintiffs in the *Breland* matter, they should not be forced to proceed in that same action.

While *Breland*, at present, is not dispositive of the issues presented by this motion, the Court has pending before it in that matter a motion to certify a class action. If Breland is so certified, it would appear that the instant plaintiffs might well be members of the certified class. Accordingly, the Court will deny the relief requested, and dismiss the case without prejudice, subject however, to refiling if the *Breland* case is not certified as a class action or if certified so as to permit opt out and plaintiffs choose to so do.

An appropriate order shall issue.

/s/ Robert R. Merhige, Jr.
United States District Judge

Date Dec. 1, 1986

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Chapter 11
No. 85-01307-R
Retained Proceeding
(Judge Merhige)

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

EMPLOYER'S TAX IDENTIFICATION NO. 54-0486348

Adversary Proceeding
No. 86-1049-R

DONNA OBERG, *et al.*,
Plaintiffs,

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant.

ORDER

For the reasons stated in the accompanying memorandum, the Court hereby ADJUDGES and ORDERS that plaintiff's motion for relief from stay is hereby DENIED. This case stands dismissed without prejudice for the plaintiffs to refile in the event the *Breland* matter, CA

86-0315-R, does not adequately and fairly resolve their concerns.

Let the Clerk send a copy of this order and accompanying memorandum to all counsel of record.

/s/ Robert R. Merhige, Jr.
United States District Judge

Date Dec. 1, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Chapter 11
No. 85-01307-R
Retained Proceeding
(Judge Merhige)

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

EMPLOYER'S TAX IDENTIFICATION NO. 54-0486348

Adversary Proceeding
No. 86-1049-R

DONNA OBERG, *et al.*,
Plaintiffs,

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant.

MEMORANDUM

This matter comes before the Court on plaintiff's motion for relief from stay filed October 6, 1986. A. H. Robins Company, Incorporated ("Robins," "Debtor") filed its response on November 12, 1986. The plaintiffs then filed a supplemental memorandum on November 14, 1986. The matter is now ripe for disposition.

Twenty-six plaintiffs from New Hampshire filed this motion in an effort to seek relief from the automatic stay so that they could proceed in a civil action against the Aetna Casualty & Surety Company ("Aetna"), a co-defendant of Robins in this bankruptcy. The instant

plaintiffs allege generally that Aetna, as the underwriter and liability insurer of the Dalkon Shield, was negligent, fraudulent, and a co-conspirator with Robins, and should thus be liable for additional money damages to the women who were allegedly injured by the Dalkon Shield.

Robins argues that this action should not be permitted to proceed in light of the United States Court of Appeals for the Fourth Circuit's ruling in *A. H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1985) where the court found that the automatic stay included Robins' co-defendants. Moreover, Robins argues that the *Breland* action, if allowed to proceed, would be dispositive of any issues in this matter. Aetna, although filing a separate brief, presents the same arguments as does Robins.

Plaintiffs argue in response to this opposition that *Breland* is not, and should not, be declared dispositive of their issues. They contend that since they did not join the plaintiffs in the *Breland* matter, they should not be forced to proceed in that same action.

While *Breland*, at present, is not dispositive of the issues presented by this motion, the Court has pending before it in that matter a motion to certify a class action. Recognizing that the stay has been lifted in *Breland* so that certain people can investigate the viability of Aetna's liability to both Robins and the individual claimants, the Court finds this proceeding duplicative at the instant time. Accordingly, the Court will deny the relief requested, and dismiss the case without prejudice, subject however, to refiling if the *Breland* matter does not fairly and adequately dispose of the instant plaintiffs' concerns.

An appropriate order shall issue.

/s/ Robert R. Merhige, Jr.
United States District Judge

Date Dec. 1, 1986

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Chapter 11
No. 85-01307-R

Retained Proceeding
(Merhige)

IN RE: A. H. ROBINS COMPANY, INCORPORATED,
Debtor,

EMPLOYER'S TAX IDENTIFICATION NO. 54-0486348

Adversary Proceeding
No. 87-1001-R

DONNA OBERG, *et als.*,
Plaintiffs,

v.

AETNA CASUALTY & SURETY COMPANY,
Defendant.

ORDER

For the reasons stated from the bench, the Court hereby ADJUDGES and ORDERS that plaintiff, Donna Oberg's ("Oberg") motion to lift the automatic stay is DENIED.

Let the Clerk send a copy of this order to all counsel of record.

/s/ Robert R. Merhige, Jr.
United States District Judge

Date April 15, 1987

TRANSCRIPT OF PROCEEDINGS

Dated April 11, 1987

[17] THE CLERK: Clerk item number 2, adversary proceeding number 87 1001 R., Donna Oberg, et al. v. Aetna Casualty and Surety Company.

Motion of the plaintiffs for entry of an order granting relief.

MR. McDOWELL: Good morning, Your Honor, Joseph McDowell from Manchester appearing on behalf of the movants, Donna Oberg, et al. Your Honor, I have a memorandum of law that I was hoping would have been filed with the court on Thursday. I circulated a copy to all counsel, but unfortunately I was not able to get Mr. Proffit's signature as local counsel and filed with the court. I don't expect the court to read it this morning.

THE COURT: We won't have time.

MR. McDOWEL: I am sorry it wasn't here.

THE COURT: In the future, when that happens, go ahead and send a copy. At least we will have that in advance, you see.

MR. McDOWELL: I am sorry. My experience has been if I didn't have local counsel, I was reticent to file it with the court, that is all. I am sorry. In the future that is what I will do. The memorandum isn't much different than the brief that I filed with the Fourth Circuit on what I call Oberg one, and we sent a copy of that brief to the court, although I am sure the court—

[18] THE COURT: Bring me up to date now. Oberg. Tell me.

MR. McDOWELL: I represent Donna Oberg and 26 other women, plus their husbands, in the state of New Hampshire. Donna Oberg was one of 11 women that I represented who had a law suit pending against A. H. Robins when this bankruptcy order was filed. She is a 26-year old woman who at that time—she is now in her 30's, but at the time had a total hysterectomy.

THE COURT: Once more, and then I won't interrupt again.

Had we heard this before? Was there an effort made? I mean, are we going over ground that we have already covered?

MR. McDOWELL: I hope not, Your Honor. This Oberg was certainly the subject of a motion that I filed previously. We did not have a hearing. But prior to the Breland order this court issued an order that you denied, dismissed the motion without prejudice for the plaintiffs, and I am quoting, to re-file in the event the Breland matter, setting the docket number, does not fairly resolve their concerns.

I filed an appeal on Oberg one. I told the Fourth Circuit that I filed this motion called Oberg two with this court. I don't want that to waste a lot of time, because I [19] know everyone in the court feels it would waste enough of its time; however, I will say that we are not participating in Breland. We feel that it does not fairly represent our concerns in this respect, and we have filed this second motion. And this is really my first opportunity to argue Oberg before this court.

I will get right to it. The Fourth Circuit once again notes about this issue of filing one here, and the Fourth Circuit doesn't know—the Fourth Circuit knows, and now the court knows about our appeal. I think things are different because the court entered the order in Breland and had made the stay with regard to Aetna to some degree.

And I would ask the court to take judicial notice of its file on Breland versus Aetna. And I would point out to the court that when Breland was filed it was filed in Minnesota, including both Aetna, Robins, and a number of individual defendants as defendants in Minnesota.

Subsequently those, some of those defendants, except for Aetna, were released, now removed from that action, and that action was transferred to this court sometime in April or May of 1986.

THE COURT: Who represents Breland?

MR. McDOWELL: I believe Mr.— I am not sure of his name, but I believe Mr. Friedberg.

THE COURT: That is the Friedberg group it has has [20] come to be known.

That is the class action?

MR. McDOWELL: That is what I understand, Your Honor.

THE COURT: Okay. All right.

MR. McDOWELL: You—I am sorry. Yes, Your Honor, that is.

That action was transferred to this court. Neither Aetna nor Robins moved to stay or stop that proceeding. That was a matter at that time was the subject of pretrial hearings, according to the docket sheet in that matter. I have copies of it here.

It was subject to some hearings in this court. Some discussions about filing proposed orders with regard to a class action. Some amended complaints filed with this court. At no time did Robins or Aetna ever move to hold those lawyers in contempt, ever seek to impose the automatic stay as a defense to that action, ever ask this court to enjoin it.

Our position is that we have cited it in a memoranda I submitted to this court—this will be handed in today—is Aetna and Robins do not have a right to assert the stay against Oberg under those circumstances.

I am not going to argue the Picinnin arguments with the court again. You made the ruling numerous times, and I do not mean to be disrespectful to the court.

[21] My only point with regard to this case is that they do not have a right to pick and choose as to which plaintiffs can go forward, Friedberg and his group are going forward, and that is fine.

THE COURT: All of you were represented in that class action.

MR. McDOWELL: Well, I am not—

THE COURT: Now, in fairness, you may have an opportunity to opt out, because the court hasn't certified it as to mandatory class, but the fact of the matter is at this moment everybody is represented. All of the claimants are represented in that action.

MR. McDOWELL: Well, it is our feeling, though, that we are not.

THE COURT: Well, you mean you don't feel that they are adequately represented.

MR. McDOWELL: I don't know Mr. Friedberg, so I wouldn't say. My point is, we are not participating, we don't know what is going on. We feel it will be an opt out class. We want to go forward in the state of New Hampshire, which has the longest statute of limitation in this country, which we believe is an important issue, as this court knows. Aetna and Robins want to impose a two-year statute in this case.

THE COURT: They don't run the show.

[22] MR. McDOWELL: I don't know that they don't. We all know that, Your Honor.

I mean that sincerly.

And I am hopeful the court will not allow them to impose a two-year statute, but the point is that Robins and Aetna do not have the right to use this injunction as an offensive weapon to forum shop. They are basically forcing every one to try their cases in Virginia.

Now, we are from New Hampshire. We want our cases heard in New Hampshire. I don't represent anyone other than 27 ladies from New Hampshire.

THE COURT: You want whatever claim you have against Aetna.

MR. McDOWELL: That is right. This court when it modified the order with regard to Breland said Robins was to be left out, the officers were to be left out; and I think the court has a right to do that, and in fact snould do that. That is all I am asking for in New Hampshire. I would like to get—New Hampshire law is probably the most liberal with regard to this type of

case in the country. I am not an expert, but I know no state has a longer statute than six years. New Hampshire would impose a six-year statute with regard to every plaintiff who filed in New Hampshire. They treat the statute of limitation as a local rule, a United States Supreme Court case on that, Keeton v. [23] Hustler Magazine.

New Hampshire doesn't allow contribution among joint tort-feasors. They follow the rule that it is joint and several liability. If we were to show Aetna was negligent at all, and our plaintiffs were free from negligence, we would be able to recover whatever verdict we could get against Aetna, entirely against Aetna without reference to Robins. And this brings me to the most important point, and I can't understand it. And I would ask this court—it is improper to ask the court a question, so I don't expect a response, but I would ask Robins to tell us today the answer to this question. You can't tell me that if Robins isn't waiting for a white knight to save them, that is what we are hoping for, that is what we are looking for, and if someone gives them a billion dollars to help bail out of it, why don't they want it?

Plaintiffs' lawyer says, let us go against Aetna. Let us at them anywhere we can. They were not entitled to the bankruptcy stay. What do they need protection for? They are a 2 hundred billion dollar company. We want right at them, right, wrong or indifferent. We will take our chances. Robins says, no. Why? There is no reason in logic why they don't want us to go against Aetna, unless there is a deal struck that we don't know about. It makes no sense. And with respect to Your Honor, I would ask [24] Robins and Aetna to stand up here and tell us why Robins doesn't want us to go after Aetna or any other defendant in this case.

It can't help but help them. They want to survive.

THE COURT: Mr. McDowell, if they wish to respond, that will be fine, but I think they have responded half a dozen times.

MR. McDOWELL: Responded they don't want to us to go after Aetna.

THE COURT: And why.

MR. McDOWELL: Well, Your Honor—

THE COURT: Go ahead.

MR. McDOWELL: This is my first time. This is my first time standing up here. No one is putting anything over on you. I am convinced that Your Honor has run the case.

THE COURT: Despite the efforts.

MR. McDOWELL: Despite the efforts. No question.

THE COURT: Thank you.

MR. McDOWELL: I knew that coming down here, so I mean no disrespect to Your Honor at all, but the question has to be asked. We think we can get some money out of Aetna. It seems to me if I were Robins and I were in bankruptcy I could use some money. I have got a lot creditors, more creditors than I have money, I think.

[25] THE COURT: Let me just suggest this to you.

You have the, I assume you have the right to bring this motion. I am sure you do.

One, the court is satisfied that the class is adequately represented by counsel.

Two, the court has made no decision as to whether it it is going to be an opt out class, although, you seem to be fairly alert as to class actions and you may well have already told us the answer, but, it hasn't been done so officially.

I honestly do not know what is going on in that case, except discovery of some sort, because I think there is something here today in connection with that.

MR. McDOWELL: That is right.

THE COURT: But your opportunity, as you put it, to go after Aetna has not been foreclosed as yet, Mr. McDowell. I want you to know that.

MR. McDOWELL: I realize that. But my point is this with regard to Robins, we can't fool around with

the bankruptcy proceedings at all. I understand that. Don't want to bother their officers or anything, but why is Aetna entitled, and why don't they want us to go after it, let us all go after. I don't understand why they want to stop us from going after Aetna or anyone else, because it only makes sense to me that it would help Robins. And I don't believe [26] they can stand up here and give us a real good reason why they don't want us to go after them. And that bothers me. I understand they don't want it. I have got that imprinted on my head. I am a Baker defendant. I understand that, I got the message. I filed a motion. I have bothered them and I know they don't like it. But I have to say that the—it is curious that they don't want all of these defendants pursued. I understand why they might want us all in Virginia. I can understand the court's concern about that. I respectfully disagree, but I can understand it, the court's concern about it. But I don't understand why it is not—

THE COURT: Can you understand what would happen if we had a hundred thousand law suits by individual people against Aetna during the pendency of this bankruptcy? Don't you have a real gut feeling as a trial lawyer that you might have to call on some of the Robins people as witnesses?

MR. McDOWELL: We can't. I think we could rely on the discovery that has already been done on this issue, Judge, court-appointed matters. I believe a judge in Minnesota who did the same thing. If we are unwilling to understand that, it is just too bad for us, that we can't bother Robins people. But Aetna, with due respect, is not entitled to any protection whatsoever. It is Aetna's problem, as well as ours, but more importantly I think New [27] Hampshire is an exception, one exception state in the country. That may sound bizarre from somebody up in the woods that I found the pot of gold in my own back yard, but true and honest we have the six-year statute, and we have those portions of the law which I cited to

the court. So I say the court should lift the stay and allow us to proceed in New Hampshire with our six-year statute.

Thank you, Your Honor.

THE COURT: Thank you.

MR. CROCKETT: Your Honor, I will be brief. I don't want to rehash everything that was said on the subject before, but I believe some of Mr. McDowell's points deserve a response, and I will do the best I can to give him one.

First off, the Breland class action: Breland was in this court when we first learned of it. It had been transferred down here. All of the things that we heard about twice this morning happened prior to Robins having knowledge of it. Right, wrong, or indifferent it has always satisfied me as Robins counsel that once an action is in this state, in this court in front of Your Honor, then they can file their pleadings, we can handle it on a motion to lift the stay. However the pleadings could get styled, they are in the right court in front of the right judge, and we will take on the substance and leave that aside. And Breland is here. Breland also is a potential class action [28] on behalf of everybody, and not an action on behalf of 27.

As pleadings presently stand, as I believe the class is defined in terms of participation in this bankruptcy, that is the critical link.

It should not say—I think it is little inconsistent to say we don't want to go, don't want to see people try to collect from Aetna, but we want Breland to go forward. Breland, right now, provides the only linkage that we know of, and I think linkage is important if there is going to be true benefit to any proceeding, out of proceedings against Aetna. Your Honors are lassoed upon the fact that it is the people at Robins who would be asked to testify in hundreds of thousands of actions across the country, potentially. And whereas Mr. McDowell would be willing to allow us to rest upon evidence

already collected, I don't know if Mr. Street and Aetna are going to be willing to go along with that. So you have that complication in there.

As long as that circumstance is extant, then we have —need the preliminary injunction, and we intend to enforce it. In this particular instance, nothing has really changed that much since Oberg one, as far as I know.

THE COURT: You intend to seek enforcement?

MR. CROCKETT: Pardon me?

THE COURT: You intend to seek enforcement of it?

[29] MR. CROCKETT: Yes, sir, we do. This is not an instance of enforcement, because we filed this motion. Oberg two doesn't represent a major change from Oberg one, because the Breland action is continuing. I think it is premature to say whether that Aetna can fairly address their concerns, because, like I say, it is pretrial discovery that is going on. I don't think anybody at this time can answer those questions. So I think we ought to be a little more patient. That is all I have.

THE COURT: All right.

Mr. Street, do you have anything to say?

MR. STREET: I think it has been, Your Honor.

Scott Street on behalf of the Aetna Casualty and Surety Company. I think our position has been accurately stated by Mr. Crockett.

THE COURT: Let me ask you. Don't we have a pretrial coming up on that case in the not too distant future?

MR. STREET: Within several months, I believe, Your Honor. There has been one scheduled. Discovery is proceeding at this time.

THE COURT: Primarily on class action aspect of it, I take it.

MR. STREET: Well—

THE COURT: Or combination.

MR. STREET: Discovery on the class action.

[30] THE COURT: Discovery on aspects of the class action.

MR. STREET: Aspects solely with respect to that. There has been a voluntary agreement not to involve, I believe by the plaintiff's counsel, not to involve any Robins people. They are limiting their discovery to the Aetna portion at this time.

THE COURT: All right. All right, sir.

MR. McDOWELL: Real quick, Your Honor. I understand the court's order in Breland, but you lifted the stay providing they leave Robins people alone. My reading of it. Two, the class certifications on Breland had not been done when we filed Oberg one, or when we came in here on September 4, 1986 for the hearing. And last, but not least, there is another instance where Aetna did not seek to impose a stay, and that was, I don't remember the name, but there was a lawsuit by lawyers in California, for fees arising out of Robins defense. They didn't seek to impose a stay on that either. So I say regardless of the rightness or wrongness of it, these defendants have what I have had, the right to impose the stay on Aetna actions because of their waiver and estoppel, and just choosing as to who they want.

Thank you very much.

THE COURT: Thank you.

Thank you, Mr. McDowell.

MR. McDOWELL: Thank you.

[31] THE COURT: I don't think the situation has changed any. We have got to deny your motion. I might say this to you, though. I wouldn't give up on the thought that you may have your opportunity as soon as the court decides if it is an opt out. Then, go get them.

MR. McDOWELL: Thank you very much, Your Honor.

THE COURT: Thank you, sir.

APPENDIX F

THE PARTIES BELOW

The parties plaintiff in Oberg, et al v. Aetna Casualty & Surety Company (Adversary Proceeding No. 86-1049-R) were:

Janice & Daniel Belcher
Susan & David Belcher
Nancy Benson
Jean & John Boeckeler
Janet Bruce
Melody Cannon
Barbara L. and David W. Carr
Helen Carty
Victoria Charnock
Marion Duford
Deborah and John Fallon
Janet and Frank Gregory
Sarah E. Haskell
Pamela Hockenhull
Patricia Johnson
Mary H. Jordan
April Weeks and Leonard Korn
Beverly McClure
Elaine Nizza
Donna Oberg
Jeanne & Paul Robey
Pamela Saxby
Shelley and Howard Shapiro
Sharon Lee Spern
Jeannette Sweet
Donna and Nicholas Tshanakas
Daphne Whitmore

* * * *

The parties plaintiff in Anderson, et al v. Aetna Casualty & Surety Company (Adversary Proceeding No. 86-1050-R) were:

Alexia Anderson
Frederick Anderson

Barbara Anderson
Philip Anderson
Paula C. Bannow
John Bannow
Diana Beard
Robert Davis Beard
Sherry Bergman
Charles Bergman
Marsha Brown
Starris Brown
Charles Brown
Jeannette Bulinski
Gregg Gundersen
Wendy Busch
Ingrid Carter
Paul Gene Carter
Lillian Castillo
Elizabeth Chamberlayne
Carol Cooke
Donna Cornelisse
Denise Crowell
Mike Crowell
Jacki Dasso
John Thompson
Sharon Ebert
Dennis Ebert
Laura Bein Emerson
Gary S. Emerson
Carol Evans
Dennis S. Evans
Melinda Evans
Hawley Roger Evans
Carla Magdanz Everett
Barbara Ferguson
Charles Ferguson
Nancy C. Franz
Roger A. Franz
Julia Block Frey

Janette Gamet McMahon
George McMahon
Carmen Graham
Ronald Graham
Xenia D. Graves
Cheryl Gruse
Roberta Guildner
Ava Hamilton
Delmar Hamilton
Dolores M. Haro
Lori Haugland
Mary Hein
William Hein
Janet Heitzmann
Mary Frances Hilko
Kathleen Jackson
Lucy Judson
Craig Alan Yeager
Betty A. Kenzel
Richard Edward Kenzel
Judy Kurtz
Judith Lavezzi
Susan Leuthauser
Truman Leuthauser
Harriet Elizabeth Mann
Sharon L. Mazotti
Daniel Mazotti
Sandra Roberts Merrill
Roy R. Merrill
Laurel Ruth Mifflin
John Mifflin
Nathan Mifflin
Sandra Diane Miller
John K. Miller
Peggy Morgan
Barbara T. Nowak
Mary Ann Perkins
Russell Perkins

Ravonda Lou Potter
Roger Jay Potter
Kathy Quinton
Judy Ramsay
Charles Edward Ramsay
Pamela Reiter
Peter Reiter
Ella Ruth Rogers
Elaine Rogers
Donis Rogers
Rebecca Seckinger
Christine Seiffert
Stefanie Selden
Judith Sheppard
M. Lee Sheppard
Jessica Simkulet
Janet Singletary
Robert Singletary
Evelyn M. Snyder
Andrew Snyder
Marcia Steel
Mary Stewart
Charles David Stewart
Karon Tiger
Thelma Lynn Tilman
Durcille Trolinger
Jo Susan Verspohl
Carol Waltz
Ronald F. Waltz
Kathleen Ann Watson
Larry Watson
Abby Weinstein
Barry Weinstein
Diane D. West
Martha Whitehead
Marilyn Wilson
Vicki Woodard

Tom George
Deirdre Zietz
Leonard Eugene Zietz

Katharine K. Beattie
Fareda E. Belcher
Floyd M. Belcher
Vicki Brown
Randy Brown
Estate of Juanita Lynn Brown
Beverley C. Davisson
William A. Davisson
Jason William Davisson
Mary Ann Evertson
Robert W. Evertson
Sandra L. McDonald
Shirley Marie Burroughs (Luetke)
Robert Burroughs
Amy Marie Hutton
Patty E. Hutton
Leon D. Hutton
Anna Louise Luhman
Sarah Elizabeth McLeod Kirk (McInnis)
David Casey McInnis
Billie Rae Mercer
Sandra J. Mertens
Ronald G. Mertens
Judith A. Nechols
James R. Nechols
Gaylene P. Schommer
John W. Schommer
Rachel Hummel Scott
David L. Scott
Nancy J. Taylor
Patricia Ann Tronsgard
Joyce Frieders
Charles D. Frieders
Heather Lillian Hull

Kenneth L. Hull
Roberta Christine Martin
Keith A. Martin
Kerstin Nordahl Males
William Males
Betsy Ann Munson
Kathleen Gay Pope
Rita Raaf
Richard Raaf
Courtney Leigh Raaf
Janet L. Scott
Fay Annetta Smith
Sonja Gretchen Sweek
Mary Ann Thomas
Steven J. Thomas
Sharon C. Angel
Gene R. Andel
Debra Gail Dean
Rhonda Jan Smith
Catherine L. Woods
Joda Donnett Doudna Wright
Patricia Byers Gilbert Graber
Kay M. Kincade
Paul W. Kincade
Johnsie Charles Brown
Joe T. Brown, Jr.
Charlotte S. James
Elizabeth E. Tomaszewicz
George R. Tomaszewicz
Rebecca L. Adair
Gary A. Adair
Linda M. Black
William R. Black
Mary Augusta Bonner
Robert I. Bonner
Patricia J. Heuseveldt
Ronald W. Heuseveldt
Elizabeth W. Rinehart

Richard R. Rinehart
Janice A. Sell
Steven K. Sell
Peggy A. Sneegas
Roger A. Sneegas
Bonlyn Kulick

Nadine K. Boyles
Kathleen J. Briley
Elizabeth and Osborne Castle-James
Rose M. Clark
Cecelia L. Cosner
Mara Crees
Charlotte M. and Donald R. Crosly
Karen L. Cusmano
Barbara A. DeMonte
Lynda C. Donato
Althea D. Flowers
Shiela and Herb Friedberg
Deborah A. Hinebaugh
Janice K. and Norman C. Hoffa
Yvonne C. Jeffers
Dorothea M. and Thomas Johnson
Karen E. and Robert B. Karnes, Jr.
Helen Jean Kipp
Judy I. and Darrel J. LaCanne
Christine E. Lee
Judith Alice McCauley
Jean S. Miniard
Isabel Pasqualino
Nancy S. and Shannon A. Perry
Teresa J. Ranson
Pamela A. and John C. Richards
Mary C. Smith
Mary L. and Earl D. Starrett
Martha B. and Kenneth C. Thomas
Madge M. and William C. Trick
Peggy H. and George E. Wightman

Shirley M. and Roland D. Woodruff
Carolyn D. and John D. Woodward

Khaleelah Abdul Badee
Mary Ellen Adams
David Adams
June F. Allen
Laura Baldwin
Sandra Barcus
Rebecca Ann Bishop
Sherri Ann Blackford
Alan Blake
Beverly Jane Blake
Robert Borack
Celia Borack
Linda Sue Branden
Renee Brownlee
Ronald Cerny
Sandra Cerny
Joyce Christopher
Anthony Cirino
Virginia Cirino
Charlotte Coffee
Fannie Coleman
Melvin Collier
Cynthia Ann Collier
Ellen Curan
Margaret F. Czarnitzki
Brent Davis
Alma Davis
Bertha Davis
Patricia Deveraux
Ronald Donatelli
Virginia Donatelli
Marquita Renee Dotson
Doris Dove-Lucas
Gail Maury Draper
Dean Duffey

Susan Duffey
Ernest Ertel
Linda Ertel
Marilyn Feinberg
Elva Ferguson
James Fisher
Beverly Fisher
Sandra Foland
Ruth Frame-Adams
L. C. Adams
Claudio Gallo-Godoy
Sheila Gallo-Godoy
Melvin Galloway
Barbara Galloway
Barry Gibberman
Nancy Gibberman
Judy Goldstein
Zenovy Golembiowski
Audria Golembiowski
Cynthia S. Goodwin
Arthur Griffin
Valeria Griffin
Laura Healey
Michael Healey
Billie Lynn Hill
Claudia L. Hill
Valdee Hitner
Charles Hitner
Felton Holloway
Trina Holloway
Ralph Holt
Adeline Holt
Judith Ann Hopkins
Johnnie Howell
Ruby Howell
Nelson Carver Hunter
LaVerne Hunter

Thomas Hurst
Jocye Hurst
Carol Jacob
Linda Jean Jakubs
Edward Jakubs
Mamie Delores James
Ginny E. Johnson
Debra Jones
Daniel Jones
Katrina Jones
Michael Kamandulis
Linda Kamandulis
Jo Ann L. Kellam
Susan Kennedy
Linda Kimbleton
Henry Kimbleton
Stella King
Jo Ann Knights
Susan Kobussen
Richard Kobussen
Sharon Koehler
Paul Koss
Mary Koss
Marion Kozelka
Barbara Rhodes Krantz
Diane Pearl Krasnov
Michael Krasnov
Greta LaBonte
Lionel LaBonte
Frank Lamp
Linda Sue Lamp
Beverly A. Lempke
Arthur Losito
Nanci Losito
Elizabeth J. Maggied
Gilbert Manke
Alice Manke
Kay Marchioni

Nancy Marlatt
Ronald Marlatt
Carol Mathews
Mary Jo Mazzolini
Ellen Dahlene McCarn
Dewey T. McGuire
Sharon McGuire
Brenda McIntyre
Bill Monroe Messer
Rhonda Gayle Messer
James Thomas Messer
Karen Elaine Messer
Stephen Miller
Robin Miller
Ann L. Miracle
James Moore
Betty Ann Moore
Marianne Moore
Shirley Mullins
Pauline Newton
Marilyn Nickerson
Grace Noble
Leonard Oskowski
Judith Oskowski
Renee Owens
Sheryn Janette Perry
Sandra Pertee
Virgil Pertee
Gary Peterson
Gail M. Peterson
Jefferica Poindexter
Robert Powell
Sharon Powell
Emily Rabb
Gary Reece
Judith Ann Reece
Marian Reid
Jenny Reliford

Sharon L. Richard
Morton N. Rosen
Judith L. Rosen
Novimbrino Angela Rumbeau
Islene Runningdeer
Robert Salsgiver
Kathleen Salsgiver
Jane Satchel
Virginia Schulman
Judith Anne Scott
Dennis Scott
Dale Shockling
Carolyn Shockling
Elizabeth Smith
Wayne Smith
Catherine Smith
Donald Smith
Helen Smith
Wanda Denise Stanton
Barbara Strowder
David Sturgeon
Jo Ann Sturgeon
Steven Urszeni
Cheryl Urszeni
Steven Alexander Urszeni, minor
Harry Van Arsdale
Patricia Van Arsdale
Kenneth Van Streader
Patricia Van Streader
Johnny Waller
Marcolina Waller
Jo Anne Warren
Jo Ann Whyte
Staria Wims
Bonnie Yappel
Nora Yisrael
Janelle Yonley

Judith E. Allan
Rethie M. Bradley
Mary Ann Casner
Sabine Chrisman
Paula J. LeClair
Yolanda E. Macias
Lurline W. Miller
Martha Adleman
Pamela Craig Andersen
Jeff Andersen
Teresitia Antonellis
Joseph Antonellis
Joanne Asplund
Ralph Asplund
Anita Baker
Bruce Baker
Margaret Diane Bobitt
Nancy Banton
Drew Banton
Geraldine Baptista
Glenda Barber
Joseph Barber
Dian Barrett
Suzanne Baxtresser
Stephen Wangh
Bonnie Beaver
Glen Beaver
Darlene Bennett
Steven Bennett
Judith W. Bergin
Charles Bergin
Marjot Berkefelt
Ove Berkefelt
Carole A. Bonin
David P. Bonin
Deborah Boucher
Dennis Boucher
Bette Bourque

Edward Bourque
Linda Bradley
Kenneth Bradley
Carole Brew
Randall Brew
Margaret A. Brockway
Richard Brockway
Patricia Brown
Mimi Buchholz
Elizabeth Buckley
Paul Donovan
Barbara K. O'Brien Burke
William H. O'Brien
Lynn Cadwallader
Susan Lee Cameron
Douglas Ford Cameron
Rebecca S. Cannata
Edward Cannata
Gale Capizzi
Frances A. Cargill
George F. Cargill
Marilyn Agnes Carter
Paula Cates
Janine Chapas
Jill Charney
Mark Steven Golden
Bonnie Chick
William Chick
Teresa Christopher
Celeste Converse
Michele Cook
Eric Wayne Cook
Gloria Charmaigne Cooley
Paula Costa
Ronald Frenkel
Cheryl Covitz
Barry Covitz

Sharlee Vail Creech
Wendy Sue Cronburg
Catherine Curtis
Diane Curtis
Linda M. Dagradi
Richard Ryan
Janet M. Darrow
Judith A. Dear
Carol DeGray
Raymond DeGray
Theresa M. DellaGrotte
Ronald L. DellaGrotte
Miriam Stella DiGirolamo
Anthony DiGirolamo
Donna Marie Doeler
Linda Low Dowell
Harry Edward Dowell
Joanne Dudley
Dennis Dudley
Kyle M. Eisenhart
Ronald M. Eisehart
Suzanne D. Emfinger
Hazel V. Williams-Evans
Lazarus Evans
Julie A. Feeley
Kevin F. Feeley
Marsha Feldman
Nancy Kubie Fenichel
Paul Fenichel
Andre Ferrick
John Ferrick
Phyllis Ferzoco
David E. Ferzoco
Roseanne Figlioli
Judith A. Finkle
John D. Finkle
Linda J. Finn
Suzanne Forgeron

Lawrence Scofield
Marjorie Fraser
George Fraser
Joanne Garfield
Janet E. Glenn
Peter Dufault
Phyllis Godes
Judith Goldberg
Irving Goldberg
Sheila Margaret Grant
Kelbin Gary Grant
Arlene Guarnera
Carmen Guarnera
Vera Marie Harding
James Wesley Harding
Diane Joan Henderson
Brent Ralph Henderson
Kathleen Hordon
Richard Hordon
Suella Horner
Karen Lee Howie
Jane Hughes
Ernest Lundin
Heather Hutchinson
Donald S. Hutchinson
Anne Hyde
Michael Stone
Donna J. Jasko
Katrina Johnson
Adriana Jones
Ann Millman Jones
Marion V. Jones
Mary Elizabeth Kellock
Herdman Clifford Kellock
Susan Kennedy
Nancy Kienzler
Thomas Kienzler
Karin E. Kittler
Ellen Kolton

Joyce A. Kosofsky
Kenneth Gloss
Susan Lazaris
William Lazaris
Nancy Elizabeth Legate
Allan Benjamin Legate
Ellen C. Lucci
Patrick Lucci
Judith Shaw Lucier
Norman Margaret MacCormick
Ronald Duncan Joseph MacCormick
Maureen Mahoney
Diane Martin
Dennis Martin
Barbara Mason
Sharyn Elizabeth Matthews
Kathleen McDermott
William Spurlin
Muriel Catherine McGrath
Linda Murphy
Mary Ann Naclerio
Lawrence Naclerio
Rosemary Nagle
James Nagle
Stephanie J. Nicoletti
Lynn Nostin
John F. Nostin, Jr.
Phyllis J. O'Neil
Ann E. O'Reilly
Jonathan Marlowe
Birgitta Ostling-Akesson
Christine Palamidessi
Nancy Pattison
Cheryl Pearson
Lawrence Pearson
Katherine Pfister
Neil Stillings
Linda Phinney

Karen Prentice
Steven Prentice
Patricia A. Prew
Gerard D. Prew
Mary Jane Quinn
John B. Quinn
Karen Quinteros
Eduardo Quinteros
Jane Lucielle Randall
Peter Dalton Randall
Theresa Rapoza
Richard Rapoza
Simone Laura Rath
Thomas Leroy Rath
Dori Rifkin
David W. Rifkin
Roberta Riddle
Martin Riddle
Linda Rudnick
Herb S. Rudnick
Susan Ryan
Robert D. Ryan
Veta Salmon
Linda Salvucci
Theodore Salvucci
June Schoenfeld
Karen Morrison Schuren
Herman Schuren
Cheryl Scott
Gary Scott
Gilda Margaret Scurrah
Kevin Douglas Scurrah
Gayle Jeannette Secord
Eileen Shea
Cornelius Shea
Eugenia Shea
Gerald F. Shea
Marilyn Sherlock

Richard Sherlock
Barbara Slade
William Slade
Barbara S. Stack
Joseph D. Stack, III
Laurette M. Stecko
Thomas J. Haley
Valerie Susan Anne Taylor
Frank Taylor
Mary Agnes Thibodeau
Annmarie Tsitsipas
Demetrios Tsitsipas
Joanne Walsh
Richard M. Walsh
Margaret Anne Ward
Michael Deran
Beverly Weaver
Anthony Weaver
Elaine Williams
Barry Williams
Mary C. Wilson
Mitchell E. Wilson
Roberta J. Wiltshire
John Wiltshire
Maureen Winning
Edward Winning
Paula Withrow
Steven G. Withrow
Frances Wolfe
Douglas Wolfe
Norman Louise Wood
Robert Glen MacKinnon
Glenna Wyman
Robin J. Yorks
Kevin Richman

Joellen Abercrombie
Jane Abrams

Janice Benton
Issac Benton
Prudence Beckh
Deborah Brady
Martin Brady
Dian Candelaria
Beth Caskey
David Caskey
Baby Girl Caskey, deceased
Mary A. Collins
Joseph P. Collins
Pamela Craig
Joe Craig
Star Cross
Frank Cross
Rebecca J. Easley
Howard K. Easley
Pamela M. Forester
Prescilla B. Guinn
Thomas Guinn
Baby Guinn, deceased
Sharon Hall
William H. Hall
Bonnie Haynes
Marie Howard
Vicki R. Johnston
Bryan Johnston
Sonia James
Antonio James
Baby James, deceased
Susan M. Killian
Diana C. Killorin
Corine Lazaro
Richard W. Lazaro
Maria R. Leyva
Lorenzo Leyva
Baby Leyva, deceased
Baby Leyva 2, deceased

Jill Lindgren
Baby Lindgren, deceased
Floraida I. Lucero
Pauline Y. Lucero
Patricia L. McQueen
Barbara D. McClain
Baby McClain, deceased
Christine Mather
Sandra K. Million
Shirley I. Murphy
Lee Murphy
Janet Ortiz
Raymond R. Ortiz
Baby Boy Ortiz, deceased
Mary M. Payne
Joe R. Payne
Baby Boy Payne, deceased
Delnita Petersen
Joyce L. Reed
Bertha Rivera
Jose Rivera
Mela Sandoval
Amy A. Scott
Debora Spanton
David Goldberg
Sandra Templeton
William Templeton
Chris Warmoth
Victoria White
Carol J. Woodard
LaVerne Webber
David A. Webber
LaVerne A. Yount

Amy Barkin
Mary Lynn Cramer
Mary Cushman
William Randall Cushman

Melissa Baron-Cyr
Paul Cyr
Joyce DiGiovanni
Ellen Eisen
Joshua Cohen
Linda Lowe Flint
Diane Hendrix
Mary Ellen Holst
Ruth Louise Hunter
Michael G. Hunter
Ursala Johnson
Raymond Goldsmith
Ellen Levy
Sheila Morse
Samuel Shapiro
Delia O'Connor
Diane Lee Palmer
Joan Rachlin
Patti Rieman
Shelley Rieman
Pam Rogers
Elizabeth Ross
Elizabeth M. Smola
Martha Jane Trusz

Sheila Arth
Myra Jans Barker
Mary Beall
Robert Beall
Joyce Flores
Nancy Gray
James Gray
Loraine Lobue
Anthony Lobue
Pam Oliver
Harry Oliver
Valarie Smith
Fred Smith

Brenda Perkins
Patricia Richardson
Eulalia Stennett
Michelle Summers
Howard Summers
Pauline Usher
John Usher, Sr.
John Usher, Jr.
Mike Usher
Paul Usher
Anna Usher
Carol Violante
John Violante, Jr.
Tina Violante
Sharon Violante
Janice Wagoner

Billie Cheryl Adams
Rosann Baracco
Helen Barnett
Michael Barnett
Patricia Barnett
Peter Barnett
Debra Blank
Robert Blank
Estate of Jennifer Blank
Susal L. Bradshaw
Marilee Brush
Ernest Brush
Frances Bryan
Gilbert Bryan
Deborah Brymer
John Brymer
Rebekah Carlson
Richard Carlson
Peggy Caudill
Michael Caudill
Janice Center

Rose Conlon
David Conlon
Florence Debakey
Barbara Detty
Kenneth Detty
Peggy Fleck
Estate of Infant Freeman
Janet Cady
Philip Cady
Darlene Geary
Harold Geary
Lois Alenius
Bonnie Chochard
Deanna Evans
Melanie Hambrick
Elaine Hiles
Thomasanna McComas
Ann Rogers
Patricia Sabatino

Sherrill Cooper
Jack Cooper
Georgine Davis
Kerry Ann Dressler
Pam Hiller
Janice L. Johnson
William H. Johnson
Daniel B. Johnson
Robert Johnson
Barbara Lillard

Linda Johnson
Howard Johnson, Jr.
Karan Kalie
Norman Kalie
Lunda Lawson
Kenneth Lawson
Deborah Leed

Craig Leed
Deborah Leitzke
Thomas Leitzke
Barbara Levine
Stanley Levine
Margaret Levitt
Stephen Levitt
Suzanne MacDonald
Christopher MacDonald
Robert McMahan
Teresa Dye McMahan
Christina Miller
James Miller
Anita Montique
Robert Montique
Adella O'Neal
Freddie O'Neal
Sharon Pacetti
Cecil Pacetti
Leslie Parker
Jeremy Parker
Linda Postlethwaite
Frederick Postlethwaite
Margaret Pula
Edward Pula
Linda Rowe
Laquita Sebba
Maxim Sebba
Linda Sherman
Arnold Sherman
Sandra Spell
Judy Sullivan
Raymond Sullivan
Deborah Walker
Paul Walker
Beverly Walsh
Linda Williams
Ernest Williams

Romona Winton
James Winton
Candice Wood
Robert Wood
Nancy Zelnick
John Zelnick

Nina Estelle Adkins
Peggy Madelin Smith
Jane L. Sauter
Susan Marie Smith
Nancy J. McDonnell
Debora Ann Kleypass
Wesley Kleypass
Catherine Henry
Robert Henry
Diana Dee Covey Shoup
Sarah Elizabeth Goodenough
Margaret Ann Black
Rosalinda Zamora Trevino
Juanita Espinosa
Helen Ruth Doty
Gail Ann Johnson
Laura Hinton
Stewart Hinton
Mary Ellen Villarreal
Jie Villarreal
Ann Bean
Johnny Bean
Lola Mae Williams
Joanne Betsy Young
Debra J. Tompkins
Carol Lee Morris
Elizabeth Ann Teague
Jim Teague
Lois Wright
James Wright
Brenda June Mendenhall

Rose Lynn Norman
Anita Boggs
Bennett Boggs
Valerie Matix
Karen Gayle Nugent
Carol Lynne Nauert
Wesley Nauert
Feliz Gonzales
Sandra Marie Briley
Felicia Bond
Gloria Diane Ozmun
David Ozmun
Rosie Lee Darden
Barbara Finster Haefeli
Laura Kay Herring
Glenda Joy Snell
Kathryn Diane Winking
Richard Winking
Judith Lynn Hunter
Martha Ann Dimmick Foster
Kathy Downs
Raye E. Downs, Jr.
Sandra Benbrook

Luvenia Alexander
Montine Brightwell
Grady Brooks
Virginia M. Brooks
Ella Mae Brown
Ruby N. Calhoun
Betty H. Clark
Joan Clark
Lula Clark
Margaret J. Clemons
Betty Dawley
Patsy Duncan
Aubrey C. Fisher
Cathy H. Geraci

Sandra Y. Gilreath
Fred Hauser
Kay Hauser
Kathleen Herman
Marvine Hibberts
Martha Jackson
Becky Kear
Janice W. Knight
Peggy Luther
Tara Luther
Juanita Manns
Dolly Mason
Gail Mayshark
Alice McCaa
Cathy McDowell
John McDowell
Michael McDowell
Eddye Miller
Carol A. Moody
Linda E. Nash
Lee C. Nation
Lynn R. Nelson
Gwendolyn Nesbitt
Dollie A. Parsons
Agnes G. Powell
Susan E. Schilling
Deborah Sealey
Donald Sealey
Elaine V. Shirley
Laurie Showalter
Peter Showalter
Donna P. Smith
Earl L. Smith
Sharon Sue Mann Smith
Pamela L. Snead
William H. Snead
Ethel R. Thomas
Patsy Thurman

Ann M. Waddell
Carol Weidinger
Lahna Barnes
Sharron Neuhauser
Ellen and Alan Blackman
Loretta and Everett Brandon
Ronda and Ernest Colbert
Margaret Gradl
Barbara Gunn
Linda and Barry Miller
Jacqueline and Wayne Patterson
Marsha Parker
Linda and John Wilson
Louise Wright Stoltz and John Stoltz
Jacquelyn Barna
Debra and Dean Beckner
Clara A. and David Biggs
Linda Johnston Berry
Judith and Gene Boggs
Willa and Timothy Branch
Charlene and Tommy Briggs
Denyce Curry
Linda and C. Gregory Clevenger
Sharon and John Dabney
Margaret and Elmer Davis
Shirlee and Raymond Dierker
Laura and Lester Duncan
Decorah and John Eblen
Priscilla Swain Fant
Karin and Robert Greathouse
Shellaugh Gordon
Melody and Marc Groves
Devera and S. Ronald Gurvitz
Sandra and Ray Henry
Linda and Michael Hines
Cynthia Hughes
Deborah and Ronald Jackson
Patricia and Daniel Jackson

Dana Johnson
Donna Moffitt
Peggy and Bobby Jones
Brenda Kohues
Linda and Rodney Kyle
Cathy and Robert MacGillivray
Mary Coy
Marilyn McKitrick
Lois Mileham
Jody and David Mount
Claudia and George Norman
Carolyn and William O'Neal
Della and Fred Pacheco
Geneva and Robert Parrish
Mary and Chester Pennington
Jutta and Eugene Perry
Susan and Donald Peyton
Nikki Price
Jan and Richard Roberts
Susan Ruggles
Betty Rush
Kathleen Shepherd
Susan Springer
Diane and Earl Sweeney
Margaret Thoresen
Carolyn Tolen
Genevieve and Ramon Toliver
Zainab Ubaidullah and Ali Abdalla
Yvonne and David Vaughn
Diana and Joseph Wagner
Linda and John Werne
Renita White
Margaret Wilson
Yvonne Williams

Roger Kearney and Stacy Lynn Kearney
Estate of Lineda Sue Kearney
Patricia Coddington

Judith Hammelman
Georgia Stroman
Judie Aitken
Peggy Anthony
Nicole and Charles Esterline
Joyce Felton
Susan and Jesse Fielden
Cathy and John Farmer
Peggy and Michael Harsin
Charles and Theresa McVicker
Betty and Donald Prather
Brenda and Roy Sherrill
Sandra and Irwin Spencer
James Spencer
Nadine and Greg Hillard
Annie and Paul Dean
Vickie and Howard Brickner
Edna Smith
Patricia and Ting-Pao Chang
Dorress Daniel
Marguerite and Hugh Hendrie
Phyllis and Bradley Hoyt
Genola Lacy
Katharine and Stephen Burns
Loretta and Elbert Seals
Jacqueline and Gordon Fykes
June and Clifford Davenport
Ernestine and Zavier Poindextger
Karen and Richard Mason
Kathy and Donald Gosser
Lorraine and Samuel Johnson
Mable Wallace
Rebecca and Gary Glorioso
Infant No. 1 and Infant No. 2
Beverly and Robert Johnson
Stephanie and James Gardner
Susan and Gregg Recht
Marjorie and Kendall Pratt

Connie and William McBride
Sandra Gravely
Penny Webb
Mary Lou St. John
Deborah and Ronald Davis
Susan and Cleve Brown
Judy and James Gillenwalters
Marcia Freeman and Selena Carter
Susan and Russell Young
Donna and Jerome Smith
Joanne and Robert Smith
Joetta and David Ewing
Rosa Rice
Sally and Gary Waggoner
Wanda White
Barbara and Clifton Woods
Julie Williams
Ardreen Adair
Juda and Ralph Woods
Diana Morris
Donna White
Vicky Wiggins
Angelis Mason
Gayle Snider
Joye and William Jones
Ailena and William Maxey
Carolyn Reid
Wanda and Paul Lew
Michelle Phillips
Carol and Wendell Wade
Eric Wade
Wanda Gaston
Shirley Artis Brewer
Barbara and Fermin Akers
Lois Sullivan
Glenda and Bobby Russell
Carol Moore
Doris Gunn

Doris and James Endsley
Ruby and Malachi Stowe
Karen and Jerry Masters
LaWanna Jones
Marcia and Alfred Jeffrey
Judy Bennett
Sally Hodge
Donna and Griff Abell
Dorothy and Charles Berry
Baby Girl
Carol Bojrab
Gloria Butsch
Jacqueline and Charles Carr
Brian Carr and Alexis Carr
Imogene Collon
Sandra Countryman and Melissa Countryman
Villa Jean and Sam Crouch
Ruth and Harry Daniel
Fae Dann
Theresa and Jake Davis
Margaret and Lawrence Deck
Jennifer Deck
Rita Dyer and Deborah Dyer
Pamela and Ralph Fass
Michelle Fass
Jeanne Favreau
Garnet and Eric Freed
Mary Gallagher
Janet Giles
Emma and Willie Gilbert
Mary Ginger
Mary and Jerry Halsema
Julia Hardesty
Margaret and Larry Hazuga
Geraldine Hillman
Bobbi Irons
Jacquelyn and John Jacobs
Doris Jenkins

Arimentha Johnson
Sandra Keitel
Linda Kirk
Julia Kirtley
Frankye and Edward Leach
Sally Light
Dyanna and Thomas Looper
Eleanor Mitchell
Dorothy and Frederick Moore
Anne Nasser
Deborah Oliver
Jessie Parker
Earlie Patterson
Mary Peeler
Brenda and Ronald Pelfree
Cathy Porter
Victoria Poole
Betty and Roy Rednour
Dorothy Rhoda and Anthony LaRosa
Cindy Richardson
Cathleen Ritter
Janet Rogers
Catherine and Robert Sansone
Darlene and B. J. Schwieterman
Cynthia and Michael Scott
Vivian Shank
Lou Gean Smith
Carol Springfield
John Whitaker Taylor and Pat Taylor
Carolyn Thomas
Patti Tidey
Betty Webster
Catherine Williams
Ann Williams
Deborah Wilson
Linda Windham
Deborah Worrel
Erma Young

Joyce Young
Barbara and Stephen Johnson
Janice and Jerome Toler
Dr. Shauna Brastock
Kathy Kieger

Sara Cotton
Vickie A. Dupuis
Sharon Klassen
Sharon Moody
Cheri Wager
Sonja McVay
Betty J. Rice
Jeanne Marie Lenz